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6 REGINA JIMENEZ

7 UNITED STATES DISTRICT COURT
8 NORTHERN DISTRICT OF CALIFORNIA

10 REGINA JIMENEZ,) No. C 07 3360 MJJ
11 Plaintiff,) MEMORANDUM IN OPPOSITION TO
12 vs.) DEFENDANT PROZAN AND MULTI-
13) FINANCIAL SECURITIES' MOTION TO
14) DISMISS
15) DATE FEB 12 2008
16) TIME 930 AM
17) JUDGE: JENKINS
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ARGUMENT

1. Plaintiff, Regina Jimenez, reasonably believed that she would be protected by a legitimate arbitration process. Now she filed a Motion to Vacate (MTV) under the Federal (“Prozan-MFS”) Arbitration Act (FAA) and defendants Prozan and Multifinancial Securities (“PROZAN-MFS”) HAVE filed a contradictory opposition to the motion, arguing inconsistently that (A) this court has no subject matter jurisdiction over the case because there is no federal question, and (B) this court DOES have subject matter jurisdiction and should

1 therefore deny plaintiffs motion/complaint and should affirm PRO-MFS' arbitration "award"

2 First of all, plaintiff seeks leave of court to amend her complaint to properly and more exactly
 3 state the basis of her federal subject matter jurisdiction: It is both the Federal Arbitration Act, 9
 4 US Code sections 6-10 et seq, and also 15 US Code sec 78aa et seq.

5 Second, we maintain that this court should order an evidentiary hearing and open up
 6 discovery to allow plaintiff to prove her case that the NASD panel was biased and prejudiced and
 7 engaged in unethical misconduct in wilfully (A) concealing from plaintiff the fact that defendant
 8 Prozan's wife is a high official in the NASD itself; and (B) truncating and then dismissing
 9 plaintiff's entire case a week before trial—without hearing, without notice, and without any
 10 opportunity to be heard. The latter action smacks of wire pulling, corruption and bias, and calls
 11 for a order vacating the fraudulently procured "award."

12 That the NASD panel not only secretly dismissed plaintiff's entire action without a hearing,
 13 but did so under cover of darkness AND ORDERED PLAINTIFF'S ENTIRE COMPLAINT
 14 AGAINST PROZAN TO BE "EXPUNGED"—THIS ALONE SMACKS OF CORRUPTION,
 15 BIAS AND DECEIT BY THIS PANEL.

16
 17 Courts held that a plaintiff could seek vacatur of the arbitral result only if it was a manifest
 18 disregard of the law, First Options of Chi., Inc. v. Kaplan, 514 U.S. 938, 942 (1995) (citing
 19 Wilko v. Swan, 346 U.S. 427, 436-37 (1953)), an implausible interpretation of the contract,
 20 Employers Ins. of Wausau v. Nat'l Union Fire Ins. Co. of Pittsburgh, 933 F.2d 1481 (9th Cir.
 21 1991), the award was procured by corruption, fraud, or undue means, 9 U.S.C. § 10, or the
 22 arbitrator exceeded his powers, First Options, 514 U.S. at 942. The argument that fits within any
 23 of these categories, is the argument that the arbitrator's failure to disclose Proxzan's wife's
 24 involvement with NASD-FINRA resulted in an award procured by corruption, fraud or undue
 25 means. **THUS THIS COURT HAS JURISDICTION TO HEAR THIS CASE. DISCOVERY**

1 SHOULD BE ORDERED: QUALLS V BLUE CROSS 22 F. 3d 839, 844 (9TH CIR 1994).

2 In Garvey v Roberts 203 F.4D 580 (9tH CIR., 2000), ballplayer Steve Garvey sued the
3 arbitrator and the court found there was federal court jurisdiction on a motion to vacate the
4 arbitration award. Garvey cited 9 USC section 10 for jurisdiction, as Jimenez does here.

5 What is the purpose of having a statute to vacate arb awards, if the federal courts lack
6 jurisdiction over those very case brought under this statute?

7
8 1.

9 Plaintiff avers that 15 US Code sec 78aa et seq apply to ALL defendants sued in this case
10 INCLUDING PROZAN, MULTI FINANCIAL SECURITIES AND THE NASD We seek leave
11 to amend to more exactly state this

12 Second, the Federal Arbitration Act (“FAA”) is a federal statute which confers jurisdiction
13 The federal law allows dissatisfied investors only one avenue to appeal their incompetent and/or
14 corrupt broker’s misconduct in investment policy: file an action in federal court undue the FAA
15 to vacate the award.

16 To then argue, as PRO-MFS does, that plaintiff has no right to bring this action here, is to
17 deny plaintiff even a semblance of due process (DP). In the case ta bar, the award is invalid and
18 should be vacated BECAUSE THE NASD PANEL DID NOT ALLOW PLAINTIFF TO
19 PRESENT HER CASE AT A HEARING OR TRIAL, AND DID NOT EVEN ALLOW HER
20 COUNSEL TO ARGUE AGAINST PRO-MFS’ 11TH HOUR MOTION TO DISMISS THE
21 CASE, WHICH WAS DECIDED ONE WEEK BEFORE THE SCHEDULED ARBITRATION
22 HEARING, AND DECIDED BEHIND CLOSED DOORS *IN ABSENTIA AND SUB ROSA* BY

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28 PLT’S OPPOSITION TO PROZAN/MULTI-FIN MOTION TO DISMISS
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A VISIBLE CORRUPT AND CORRUPTED PANEL OF THREE ARBITRATORS WHO
SHAMELESSLY FAILED TO DISCLOSE THEIR CONFLICT OF INTEREST AND FAILED
TO DISCLOSE TO PLAINTIFF THE FACT THAT PROZAN'S WIFE WAS AND IS A
MAJOR TOP NATIONAL OFFICIAL OF NASD, AS SHE SITS ON THE ASSIGNMENTS
COMMITTEE AND THUS HAS POWER TO GRANT OR DENY LUCRATIVE
ARBITRATION ASSIGNMENTS TO THE VERY ARBITRATORS WHO SAT ON THIS
CORRUPT PANEL.

Plaintiff also argues under the Due Process clause of the US Constitution—which raises a federal question—she was denied substantive and procedural due process (DP) in that she was deprived of a hearing or trial and saw her case truncated and then dismissed arbitrarily by this corrupt panel.

Defendants also argue that plaintiff should have submitted declarations or affidavits in support of her motion to vacate. But plaintiff asks for an EVIDENTIARY HEARING AND TRIAL and avers that declarations are hearsay and do not afford right to cross examination, nor do they allow the judge the right to assay the credibility of the conflicting combatant witnesses.

Plaintiff has asked the court also to allow discovery on this case, at least as to the issue of why the NASD arbitration panel (“AP”) dismissed her case *in absentia*, a week before trial. She wants to depose the three arbitrators, Prozan and Prozan’s wife. She maintains she has a DP right to do this and thus just submitting hearsay declarations is not sufficient

Plaintiff has made very serious ethical, moral and legal arguments showing a prima facie case why the panel was corrupted because of the corrosive and pernicious overbearing influence of Prozan’s wife, who turned out to work for the very panel which was purportedly supposed to be

1 “fair and neutral” on the case involving her husband.

2 The federal courts have inherent equity jurisdiction to hear cases invoking constitutional and
 3 DP rights and this is sure one of those cases. The self-serving hearsay declaration of Elizabeth
 4 Lowery, PRO-MFS’ lawyer, will not be adequate to even begin to address the issues raised by
 5 plaintiff. Lowery does not even address the issue of bias and prejudice and wilful concealment of
 6 the fact that Prozan’s wife was a high official in NASD. The Declaration simply argues,
 7 conclusory in tone and empty in substance, that the panel’s shameful *in absentia* “award” should
 8 be “confirmed” simply because it was issued by this panel. This is a circular argument, “The
 9 award is *ipso facto and ipse dixit* valid because it was issued by the panel.”
 10

12 But plaintiff seeks to go behind the curtains to expose the charade that passed for “fair
 13 arbitration” and expose the wire-pulling behind the scenes by Prozan and his wife.
 14

PRO-MFS also argue, incredibly, that because of nomenclature in the plaintiff’s action,
 calling it a “complaint” and a “motion to vacate,” the court should deny it in whole. This absurd
 argument has no authority. Again, the court must look to the substance of what is presented to it,
 and nomenclature does not strip an action of its merit. Clearly plaintiff moves to vacate the *in
 absentia sub rosa* arbitration “award,” and that is clear from the pleading. We seek leave to
 amend to make it clear that this is both a complaint and a motion to vacate, because we seek not
 only to hold the award null and void but also to have the NASD held accountable for corruption
 and concealment of serious conflict of interest and bias. This makes the action both a complaint
 and a MTV, and this duality does not logically nor legally render the action invalid \and
 dismissible. This absurd argument is as insubstantial as the rest of these defendants’ motion.
 25

Defendants also seek to assert arguments why NASD itself should be immune from this suit.
 27

1 But they do not have standing to assert such arguments, and should not be allowed to. The fact is
2 that under 15 USC sec. 78aa, NASD can be sued and should be sued because it corrupted the arb
3 process by allowing and concealing the fact that Prozan's wife worked for NASD as a top official
4 responsible fro assigning the very lucrative cases on which the arbitrators earned their living.
5

6 The argument that PRO-MFS should be allowed to submit a yet more "detailed" brief in
7 opposition to the plaintiffs motion, is absurd. These defendants had every opportunity to submit
8 whatever they wanted in their original motion to dismiss. They cannot come in here now and
9 have a second bite at the apple.
10

11 Finally, Prozan's argument that plaintiff's case is meritless, because "the stock market went
12 down in general," is self serving argument. The level fo losses Prozan's incompetent stewardship
13 caused plaintiff was fafr worse than the percentage of NASDAQ OR DOW JONES indsex
14 declines for the period, 1998-2003. And plaintiff questions the procedure by which Prozan and
15 MFS—and now their lawyers herein—finagled first the loss of nearly a million dollars of
16 plaintiff's assets, and then sought to cover up their misdeeds by procuring a fraudulent and *in*
17 *absentia, sub rosa* dismissal of the case without a hearing or notice. That this same panel sought
18 to immunize Prozan not only from liability to plaintiff, but also by taking the extraordinary step
19 of expunging plaintiff's complaint against him from the Record of NASD—shows how invalid
20 the absentee award was.
21

22 For the above reasons the court should deny the motion to dismiss If granted, it should be
23 with leave to amend.
24

25 Dated: JAN 22, 2008
26

27 Respectfully submitted,
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/S/

Stanley G. Hilton

Attorney for Plaintiff

**PLT'S OPPOSITION TO PROZAN/MULTI-FIN MOTION TO DISMISS
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